



South Carolina House of Representatives

# Legislative Update

Robert W. Harrell, Jr., Speaker of the House

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## MAJOR ISSUES FROM THE 2009 LEGISLATIVE SESSION

This report highlights activity of the first regular session of the 118<sup>th</sup> South Carolina General Assembly. This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage. Since this document focuses on key issues, not all provisions of legislation are included in the summaries.

This report is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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## 2009-2010 APPROPRIATIONS

The General Assembly approved H.3560, the Fiscal Year 2009-2010 general appropriation bill. The South Carolina state government budget utilizes a FY 2008-09 Recurring General Fund Base of \$5.9 billion and \$398,764,684 in FY 2009-10 "New" Recurring General Fund Revenue.

The budget includes \$348 million in State Fiscal Stabilization Funds available under the federal American Recovery and Reinvestment Act of 2009 (ARRA). Budget legislation includes a provision which states it is the intent of the General Assembly to accept all available funds from the State Budget Stabilization Fund contained in the American Recovery and Reinvestment Act of 2009 (ARRA). The State Treasurer and the Comptroller General are jointly assigned the responsibility for collecting information regarding funds distributed to various state entities from ARRA and providing the public with an accounting of how these funds are spent. State agencies are also required to provide information on their websites about the use of ARRA funds during the current fiscal year.

**General Reserve Fund:** The contribution of \$63,923,944 restores the balance in the fund to \$172,020,851. This restores one third of the total to the fund as is required by the SC Constitution.

**Capital Reserve Fund:** The incremental decrease of (\$5,322,170) brings the balance in the fund to \$127,847,888 which is equal to 2% of the General Fund revenue from the last completed fiscal year as provided for in the SC Constitution.

**Local Government Fund:** The Local Government Fund receives a reduction of \$49,947,911. Separate legislation accompanies the budget. Several provisions were also passed to give local governments more flexibility in their budgeting process. A requirement that levels for certain offices be maintained at the same level as the previous year was waived, and they are granted to transfer appropriated state funds between programs as necessary to maintain services.

**Homestead Exemption Fund:** The anticipated shortfall in the Homestead Exemption Fund is funded at \$107,458,034.

A budget provision suspends some requirements for state government reports to be printed, so they can be issued only in electronic form.

**Education Finance Act (EFA):** The EFA was reduced \$85,000,000 in Part IA funds. \$184,922,339 of the Federal State Fiscal Stabilization Fund is directed to SDE for EFA Funding. This will result in a base student cost of \$2,034 in Part IA plus \$300 in Part III stabilization funds for a total base student cost of \$2,334. The statewide minimum teacher salary schedule used in Fiscal Year 2008-09 will continue to be used in Fiscal Year 2009-10.

**Education Improvement Act (EIA):** The EIA was reduced \$22,750,000. This reduction was spread equally over each line, exempting those relating to teacher salary and fringe. There was a one year suspension of Palmetto Gold and Silver, competitive teacher grants and external review teams in order to make funds available to mitigate EIA

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reductions in National Board, teacher supplies and CERRA-Teaching Fellows Program as well as to fund teacher salary supplements and Science PLUS.

**Four-Year Old Pre-Kindergarten Child Development Education Program** is funded at \$17,300,000. This is a pilot program available in the trial and plaintiff districts only.

**National Board Certification Incentive** is funded at \$13,400,000. Based on previous pass rates and current NBPTS certified teachers, the State anticipates that 1,045 teachers will achieve certification in 2009, in addition to the 5,806 currently certified teachers.

**Transportation/Bus Shop:** School buses, parts, fuel, and other school transportation items were funded at \$17,500,000.

**Assessments** are funded at \$4,500,000 for assessments that must be given to comply with Federal No Child Left Behind requirements.

**Kindergarten through Fifth Grade Reading, Math, Science, and Social Studies Program** receives \$41,891,798 through the Education Lottery and \$5,722,729 through certified unclaimed prizes in the Education Lottery.

**Grades 6-8 Reading, Math, Science, and Social Studies Programs** receives \$2,000,000 through the Education Lottery.

**Higher Education** Institutions receive federal stimulus fiscal stabilization funds. 2% base reductions have been incorporated for all institutions. Scholarship programs are fully funded and an additional \$1.5 million is provided for Needs-based grants.

**Department of Health and Human Services: Medicaid Maintenance of Effort:** To maintain the current level of benefits and enrollees, HHS receives \$98,897,191. Other items funded under the Department of Health & Human Services are restorations of programs that had been cut due to budgetary constraints.

**Institutes for Mental Disease (IMD) Transition Plan:** IMD is defined as a hospital, nursing facility, or other institution of more than sixteen beds that is primarily responsible for providing diagnosis, treatment and/or care of individuals with mental disease, including medical attention, nursing care and related services. HHS receives \$26,000,000 in recurring dollars to complete the three-year transitional plan to replace the loss of federal funding for rehabilitative services rendered in a group home setting.

**Disproportionate Share MUSC:** The \$7,500,000 allocation will allow MUSC to increase its match for the hospital's disproportionate share as well as other Medicaid reimbursement programs. There is also \$100,000 allocated to MUSC for Transplant Services and \$250,000 for Rural Dentistry.

**Department of Health and Environmental Control: Water Quality Monitoring –** \$1,376,199 was funded to maintain quality of water inspections for the State's drinking water as well as lakes and streams.

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**Vaccine Purchases for Underinsured Children** – The \$2,000,000 appropriation funds vaccinations for those who could otherwise not afford them. This was funded in the previous budget as well.

**AIDS Drug Assistance Program** - DHEC was given \$2,400,000 that funds medications for AIDS patients and would completely end the wait list for those waiting for treatment.

**Infant Mortality Reduction** - \$1,000,000 is allocated to continue this program which increases the chances of healthy births Statewide.

**Babynet:** \$1,600,000 is allocated for South Carolina's Early Intervention Program for children who are experiencing disabilities or developmental delays.

**Rural Hospital Grants and Equipment and Facilities** – A total of \$6,000,000 is allocated for the State's Rural hospitals which serve a large part of South Carolina's rural population that cannot reach the larger hospitals in the State.

**Best Chance Network** - This program was funded at \$2,000,000 and will increase the total number of breast and cervical exams across the state to help increase the chances of early detection.

**Colorectal Cancer Screening** - \$1,000,000 was appropriated for Colorectal Cancer screenings to help with early detection of Colorectal Cancer.

**HIV Prevention** – Formerly funded under Prevention Partnership Grants, this \$1,000,000 allocation funds preventative measures against HIV. **Chronic Disease Prevention, Diabetes** - \$2,000,000 funds the prevention of Diabetes through education and early detection measures. **Youth Smoking Prevention & Cessation** - \$2,000,000 funds Education and prevention measures to stop underage persons from smoking cigarettes and using other tobacco related products.

**Department of Disabilities and Special Needs: Restoration of Waiver Services** - \$5,253,000 in recurring dollars allows the Agency to continue running the waiver programs. This includes the waiver for In-home support and the PDD waiver for autism and other pervasive developmental disorders which were funded in non-recurring dollars in the previous budget year.

**Attorney General** – The agency's base funding is reduced \$975,588. A proviso authorizes use of \$2.2 million of court settlement fines towards water litigation costs. Another proviso transfers \$500,000 from the Department of Commerce for water litigation expenses.

**Commission on Indigent Defense** – Base funding is increased \$3.3 million for annualization of funds for implementation of the Indigent Defense Act.

**Governor's Office, SLED** – The agency's base is cut; however \$1 million in non-recurring funds and \$2 million in Federal Budget Stabilization Funds are provided to offset the cuts to the recurring base.

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**Department of Public Safety** - The agency's base funding is reduced \$11.3 million. The agency receives \$4 million of non-recurring funds and \$15 million of Federal Budget Stabilization Funds for a net "increase" of \$6.3 million.

**Department of Corrections** – The agency receives General Funds and Federal Budget Stabilization Funds for a total of \$48.3 million to meet its operational funding needs based on the current year's deficit figures.

**Department of Probation, Parole and Pardon Services** – The agency's base funds are reduced \$3 million; however the agency receives \$1 million of non-recurring funds and \$2 million of Federal Budget Stabilization Funds.

**Department of Juvenile Justice** – The agency's base funding is increased \$6.4 million, and it receives \$2 million of non-recurring funds and \$5 million of Federal Budget Stabilization Funds for a net increase of \$13.4 million.

**Department of Insurance:** The agency has a reduction in travel of \$36,261, a 2% reduction of \$80,420 and a base reduction of \$1,300,000. The Department of Insurance has a total reduction of \$1,416,681. The Department of Insurance is authorized to charge a \$25 initial producer license fee and a \$25 biennial producer license renewal fee. The Department is also allowed to charge a \$250 penalty for late renewals.

**Department of Labor, Licensing, and Regulation:** The agency has a travel reduction of \$150,012 and a 2% reduction of \$42,795. The Department of Labor, Licensing, and Regulation has a total General Fund reduction of \$192,807. The agency will redirect Other Funds in the amount of \$9,119,315.

**Department of Motor Vehicles** – The agency is directed to transfer funds to SLED, PPP, DJJ, and DPS in the total amount of \$8,000,000. Repayment of the funds and suspension of plate replacement is provided for.

**The Lieutenant Governor – Office on Aging** - The Office on Aging was allocated \$2,900,000 for Home and Community Based Services (which includes Congregate and Home Delivered Meals).

**The Budget & Control Board** - The agency has a travel reduction of \$85,230. The agency has a base of \$2,341,577. The agency receives \$1,800,000 for General Services Rent Reimbursement. The agency is to transfer \$1,400,000 for Hydrogen Loan Repayment.

**Parks, Recreation and Tourism** – The agency receives \$10,000,000 in non-recurring funds for Destination Specific Tourism through two provisos.

*STATUS: Having passed the General Assembly, **H.3560** was ratified on May 13, 2009 (R.49). On May 19, the Governor vetoed certain items. The House of Representatives and the Senate subsequently sustained some of the vetoes, but overrode others to allow those items, along with provisions not vetoed by the Governor, to become law. Provisions of the budget legislation requiring the Governor to accept federal stimulus funds became the subject of multiple lawsuits. On June 4, the South Carolina Supreme Court ordered the Governor to accept the federal stimulus funds.*

# AGRICULTURE AND NATURAL RESOURCES

## BOTTLENOSE DOLPHIN, STATE'S OFFICIAL MARINE MAMMAL

The General Assembly approved legislation designating the bottlenose dolphin as the official state marine mammal.

*STATUS: Having passed the General Assembly, **H.3131** (R.94) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*

## CARE OF LIVESTOCK, ANIMALS, AND POULTRY

The General Assembly passed **S.453**, a bill relating to the care of livestock, animals, and poultry. Under this legislation, units of local government may not enact ordinances, orders, or other regulations concerning the care and handling of livestock and poultry. Care and handling means accepted animal husbandry practices. The stated intent of this legislation is for the General Assembly to occupy the field of regulation of care and handling of livestock and poultry. All local laws and ordinances related to the regulation of and the enforcement of the care and handling of livestock and poultry in this State are preempted and superseded by laws enacted by the General Assembly. The provisions do not apply to the "Right to Farm Act" and do not affect a local unit of government's authority to enact ordinances concerning new swine operations and new slaughterhouse operations. The legislation outlines that governing body of a county may not impose a storm water fee on agricultural lands, forest lands, or undeveloped lands. However, any county which imposes such a fee on these lands on the effective date of this provision may continue to impose that fee under its same terms, conditions, and amounts. The provisions also do not preclude or limit a unit of local government's right to exercise its land use and zoning authority. Under the legislation, only property owners and residents within a two mile radius of a permitted livestock and poultry facility, with the exception of a swine facility, may appeal a permit issued by the Department of Health and Environmental Control pertaining to the facility. The legislation also provides that a compounding pharmacist who fills an order for performance enhancing mineral or drug compounds which are not FDA approved for polo horses prior to a polo match must certify the compound with his signature accompanied by a complete listing of the components contained in the compound. A pharmacist who violates these provisions is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

*STATUS: Having passed the General Assembly, **S.453** (R.70) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## FLOUNDER POPULATION STUDY PROGRAM

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Under **H.3572**, legislation regarding shark catch limits, the General Assembly passed the Flounder Population Study Program to be administered by the Department of Natural Resources. The program shall study the effects of flounder catch limits and the prohibition of artificial illumination powered by generators on flounder of the species *Paralichthys dentatus*, commonly known as the summer flounder, located in the waters of Murrells Inlet Estuary, Pawleys Island Estuary, and the creeks of Litchfield flowing into Pawleys Island Estuary. The program shall run for five years, beginning January 1, 2010 and ending December 31, 2015. The Department of Natural Resources must compile its findings and submit the report to the General Assembly by March 16, 2016.

*STATUS: Having passed the General Assembly, **H.3572** (R.107) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## **LIMITING THE AUTHORITY OF COUNTIES AND MUNICIPALITIES TO RESTRICT OR REGULATE CERTAIN FORESTRY ACTIVITIES**

The General Assembly passed **H.3651**, legislation limiting the authority of counties and municipalities to restrict or regulate certain forestry activities. The legislation provides that a county or municipality must not adopt or enforce any ordinance, rule, regulation, resolution, or permit related to forestry activities on forestland that is: (1) taxed on the basis of its present use value as forestland; (2) managed in accordance with a forest management plan; (3) certified under the Sustainable Forestry Initiative, the Forest Stewardship Council, the American Forest Foundation's Tree Farm System, or any other nationally recognized forest certification system; (4) subject to a legally binding conservation easement under which the owner limits the right to develop or subdivide the land; or (5) managed and harvested in accordance with the best management practices established by the State Commission on Forestry. The legislation does not limit or alter the authority of a county or municipality to regulate activities associated with development, provided that a county or municipality requires a deferral of consideration of an application for a building permit or development plan under specific time frames. A person whose application for a building permit, a site disturbance or subdivision plan, or any other approval for development is deferred pursuant to these provisions may appeal the decision to the appropriate governmental authority.

*STATUS: Having passed the General Assembly, **H.3651** (R.109) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## **NORTHERN RIGHT WHALE, STATE'S OFFICIAL MIGRATORY MARINE MAMMAL**

The General Assembly passed legislation designating the northern right whale as the official state migratory marine mammal.

*STATUS: Having passed the General Assembly, **H.3131** (R.94) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*



## **‘OUR FARMS-OUR FUTURE’ SPECIAL LICENSE PLATES**

The General Assembly approved legislation allowing the Department of Motor Vehicles to issue special license plates to owners of private passenger carrying motor vehicles or motorcycles registered in their names which shall have imprinted on the plate 'Our Farms-Our Future' and which may have a design representative of agriculture. The South Carolina Farm Bureau Federation shall submit to the department for its approval a design it desires to be used for this special license plate. The South Carolina Farm Bureau Federation may request a change in the design not more than once every five years. The fee for this special license plate is seventy dollars every two years in addition to the regular motor vehicle registration fee. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued. The fees collected above the cost of the regular motor vehicle registration fee must be distributed to the 501(c)(3) nonprofit South Carolina Farm Bureau Federation 'Ag in the Classroom' Fund. The legislation includes production guidelines for the plates.

*STATUS: Having been approved by the General Assembly, **H.3762** (R.115) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## **REVISIONS TO THE OFFENSE OF REMOVING OR DESTROYING FENCES, GATES OR OTHER BARRIERS ENCLOSING ANIMALS, CROPS OR UNCULTIVATED LANDS**

The General Assembly approved legislation which makes revisions to the offense of removing or destroying fences, gates or other barriers enclosing animals, crops or uncultivated lands. Under this legislation a person, other than the owner or a person acting under the authority of the owner, who wilfully and knowingly removes, destroys, or leaves down any portion of a fence intended to enclose animals of any kind or crops or uncultivated lands or who wilfully and knowingly leaves open or removes a gate or leaves down bars or other structure intended for the same purpose is guilty of a misdemeanor and must be punished by a fine of \$1,000 dollars or imprisonment for 30 days, or both. The magistrates court is vested with jurisdiction to hear and dispose of these cases. These provisions do not affect an easement holder's right and ability to maintain such easement and rights-of-way consistent with the provisions of the document granting such easement.

*STATUS: Having been approved by the General Assembly, **H.3013** (R.87) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*

## **RIGHT TO HUNT AND FISH**

The General Assembly approved **H.3483**, a joint resolution proposing to amend the State Constitution so as to provide that hunting and fishing are valuable parts of the state's heritage, important for conservation, and a protected means of managing nonthreatened wildlife. The citizens of this State have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife

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conservation and management as prescribed by the General Assembly. Nothing in these provisions shall be construed to abrogate any private property rights, existing state laws or regulations, or the state's sovereignty over its natural resources. This proposed constitutional amendment will be submitted to the voters at the next general election.

*STATUS: Having been approved by the General Assembly, **H.3483** (R.104) was ratified on May 27, 2009.*

## **SOUTH CAROLINA WILDLIFE SPECIAL LICENSE PLATES**

The General Assembly approved legislation authorizing the Department of Motor Vehicles (DMV) to issue a collection of special motor vehicle license plates to owners of private passenger carrying motor vehicles and motorcycles. The fee for each special license plate is \$30 every two years in addition to the regular motor vehicle license fee. Each special license plate must be of the same size and general design of regular motor vehicle license plates, and must be imprinted with the words 'South Carolina Wildlife.' Each special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued. Of the fees collected, the Comptroller General shall place sufficient funds into a special restricted account to be used by the DMV to defray the expenses of the department in producing and administering this special license plate collection. The remaining funds collected from each special motor vehicle license plate fee must be deposited in the Game Protection Fund. The DMV simultaneously may make available more than one special license plate. However, before the DMV produces and distributes a special license plate with the South Carolina Wildlife collection, it must comply with production and distribution guidelines.

*STATUS: Having been approved by the General Assembly, **H.3762** (R.115) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## **SUMMER DUCK, STATE'S OFFICIAL DUCK**

The General Assembly passed legislation designating the summer duck as the official state duck.

*STATUS: Having been approved by the General Assembly, **H.3131** (R.94) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*

## **UNLAWFUL TO REMOVE CERTAIN KINDS OF TURTLES**

The General Assembly passed legislation that makes it unlawful for a person, or a group of individuals traveling in one vehicle, to remove, or attempt to remove from this State more than ten, either in one species or a combination of species, of the following species of turtles at one time with a maximum of twenty turtles of these species, either individually or in combination in any one year: yellowbelly turtle (*Trachemys scripta*), Florida cooter (*Pseudemys floridana*), river cooter (*Pseudemys concinna*), chicken turtle (*Deirochelys reticularia*), eastern box turtle (*Terrapene carolina*), eastern painted turtle (*Chrysemys picta*), spiny softshell turtle (*Apalone spinifera*), Florida softshell turtle (*Apalone ferox*), and common snapping turtle (*Chelydra serpentina*). The provisions of this legislation do not prohibit the sale, offer for sale, or purchase of the yellowbelly turtle (*Trachemys scripta*) species and the common snapping turtle (*Chelydra serpentina*) species if these turtles were taken from a permitted aquaculture facility with required documentation. A person violating these provisions is guilty of a misdemeanor and subject to a fine of up to two hundred dollars and/or up to thirty days in jail. Each turtle unlawfully removed or in possession of a person attempting to remove them unlawfully

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constitutes a separate offense. A violator must also have his permit permanently revoked and may never be issued another one.

*STATUS: Having passed the General Assembly, **H.3121** (R.30) was signed by the Governor on May 5, 2009 (Act No. 6).*

## **WILDLIFE MANAGEMENT AREAS (WMA)**

The General Assembly passed **H.3794**, a bill relating to additional prohibited activities on wildlife management areas (WMA), Heritage Trust areas and other Department of Natural Resources owned lands. Among other things, this bill creates a misdemeanor criminal offense for entering or remaining on a closed area contrary to the instructions of a law enforcement officer, manager, or department custodial personnel. The legislation shall not interfere with the use and management of lands by a state agency charged with the management of those lands as part of the functions of the agency authorized by law or with the management and use by a landowner of his lands with the WMA program. In addition the legislation will not alter in any way the rights of owners of easements and rights of way within the boundaries of those lands.

*STATUS: Having been approved by the General Assembly, **H.3794** (R.116) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

# **BUSINESS/CONSUMER PROTECTION**

## **“CUSTOMER CHOICE AND TECHNOLOGY INVESTMENT ACT OF 2009”**

The General Assembly approved and the Governor signed into law **H.3299**, the “Customer Choice and Technology Investment Act of 2009”. The legislation responds to the rapidly-evolving array of new options for telecommunication services resulting from competition among traditional telephone services, cable companies, voice over Internet protocol (VoIP) providers, wireless communications services, and other communications service providers by establishing a mechanism for alternative regulation that a qualifying local exchange carrier may choose which relaxes certain restrictions to relieve customers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at competitive prices. This optional alternative regulation is offered as a means of making the full range of competitive options available to customers of communications services while maintaining inflation-based price controls for those customers who wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, and, at the same time, ensuring that customers in rural areas of the state continue to have access to basic local exchange service at affordable rates.

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*STATUS: Having passed the General Assembly, **H.3299** (R.32) was ratified on April 30, 2009, and was signed into law by the Governor on May 6 (Act No. 7).*

## **MIXED MARTIAL ARTS**

The General Assembly approved **H.3042** which authorizes the combative sport of mixed martial arts in South Carolina and provides that the State Athletic Commission is to supervise and regulate mixed martial arts competitions. The legislation repeals a provision relating to ultimate fighting events as being unlawful.

*STATUS: Having passed the General Assembly, **H.3042** (R.90) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*

## **PAYDAY LENDING**

The General Assembly approved **H.3301**, legislation imposing new restrictions on deferred presentment services, commonly referred to as Payday Lending. Under the legislation, an individual is limited to having no more than one deferred presentment transaction at any one time. The legislation requires a deferred presentment provider to offer an extended payment plan, at no additional charge, to a customer who is unable to repay a deferred presentment transaction when originally due. While engaged in an extended payment plan, a customer is not eligible to enter into another deferred presentment transaction. In order to prevent an individual from having multiple deferred presentment transactions at one time, the legislation provides for information on all transactions and extended payment plans to be compiled on a common database with real-time access through an Internet connection that deferred presentment providers must consult prior to entering into a transaction with a customer. The legislation imposes reporting requirements on deferred presentment providers to keep the database updated regarding all transactions, establishes conditions for the release of database information, and allows for the charging of a database verification fee. Under the legislation, the total amount advanced to a customer for deferred presentment or deposit, excluding authorized fees, may not exceed \$550. A customer has the right to rescind a deferred presentment transaction, at no cost, on or before the close of the following business day. The legislation limits how quickly a customer can enter into a new loan by requiring a one-day cooling off period for each of a customer's first seven successive loans and a two-day cooling off period beginning with a customer's eighth loan during a single year. The legislation provides that a person may not engage in the business of deferred presentment services with a customer residing in this state, whether or not that person has a location in South Carolina, without obtaining a license in this state and complying with this state's legal requirements. The legislation increases the amounts of licensure and renewal fees and provides for half of the renewal fees collected to be distributed to the Attorney General's Office for prosecution of deferred presentment violations. Utilizing database information, the Board of Financial Institutions is required to make an annual report to the General Assembly on payday lending in South Carolina.

*STATUS: Having passed the General Assembly, **H.3301** (R.98) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## SCRAP AND JUNK DEALER REQUIREMENTS

The General Assembly approved **S.184**, a bill providing new requirements for scrap and junk dealers as a means of deterring the sale of stolen metal. The legislation establishes new requirements for demolishers and dealers in scrap and junk to collect and maintain certain identifying information on the sellers of scrap metal or vehicle parts, as well as certain identifying information on items purchased. The legislation enhances penalties for violations of junk and scrap dealing provisions. Catalytic converters and copper clad steel wire are added to requirements relating to nonferrous metals. Under the legislation, it is unlawful for a person to transport or have in the person's possession on the highways of this State nonferrous metals of an aggregate weight of more than twenty-five pounds in a vehicle other than a vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals, unless the person: (1) has in his possession a properly signed bill of sale; or (2) can present, either orally or in writing, a valid transportation permit number provided by the sheriff of the county in which the person resides. The legislation provides that a vehicle that has had at least two colored tags previously placed on it is an abandoned vehicle and may be removed immediately by a law enforcement agency to a designated place to be sold. The legislation also provides that it is unlawful for a junkyard owner to allow motor vehicles to be parked on a highway adjacent to his property.

*STATUS: Having passed the General Assembly, **S.184** (R.59) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## SOUTH CAROLINA HOUSING COMMISSION

Legislators approved **H.3919**, a bill establishing the South Carolina Housing Commission to provide recommendations to the Governor and the General Assembly on an annual basis to ensure and foster the availability of safe, sound, and affordable housing and workforce housing for every South Carolinian. The commission may also make recommendations relating to such other housing, real property, and community development issues as it considers desirable. The commission is charged with reviewing newly enacted federal legislation pertaining to mortgage lending and brokering and determining if the federal legislation necessitates amendments to the laws of this State. The commission consists of fifteen members: five must be members of the House of Representatives appointed by the Speaker of the House; five must be members of the Senate appointed by the President Pro Tempore of the Senate; and five must be nonlegislative members selected by the legislative members. All members must be qualified electors of this state. Commission members serve without compensation, subsistence, per diem, or mileage. Staff for the commission shall be provided from the appropriate standing committees of the House of Representatives and the Senate.

*STATUS: Having passed the General Assembly, **H.3919** (R.118) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## “SOUTH CAROLINA MORTGAGE LENDING ACT”

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The General Assembly approved **S.673**, the “South Carolina Mortgage Lending Act,” which brings the state into compliance with new federal requirements for mortgage lenders imposed under the Secure and Fair Enforcement for Mortgage Licensing (S.A.F.E.) Act of 2008. Should a state fail to enact statutes that comply with the requirements of the federal legislation by July 1, 2009, the United States Department of Housing and Urban Development (HUD) is authorized to impose regulations. The legislation establishes new requirements for mortgage lenders and loan originators relating to: licensure, background checks, continuing education, record keeping, maintenance of surety bonds, reporting and filing, limitations on advertising and other business activities, penalties for violations, and participation in the Nationwide Mortgage Licensing System and Registry.

*STATUS: Having passed the General Assembly, **S.673** (R.77) was ratified on May 27, 2009, and became law without the Governor’s signature on June 3.*

## **SPECIAL BUILDING INSPECTORS**

The General Assembly approved **S.268** which revises provisions for Building Code Inspection Officers to authorize the certification of special building inspectors. The revisions are offered to allow for the use of inspectors who are equipped with specialized knowledge in particular construction trade disciplines, such as plumbing, electrical, mechanical, and fuel gas and energy conservation, rather than general construction trade knowledge.

*STATUS: Having passed the General Assembly, **S.268** (R.46) was ratified on May 13, 2009, and became law without the Governor’s signature on May 20 (Act No. 20).*

# **CRIMINAL JUSTICE AND LAW ENFORCEMENT**

## **LAW ENFORCEMENT TRAINING AND EDUCATION**

The General Assembly approved legislation which allows forfeited monies and proceeds from the sale of property related to drug proceeds to be used for drug or other law enforcement training or education.

*STATUS: Having been approved by the General Assembly, **H.3761** (R.114) was ratified on May 27, 2009, and became law without the Governor’s signature on June 3.*

## **UNAUTHORIZED PRACTICE OF LAW**

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The General Assembly approved legislation relating to the unauthorized practice of law. This bill provides that no person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. Criminal penalties for the unauthorized practice of law remain unchanged by this legislation.

*STATUS: Having been approved by the General Assembly, **H.3123** (R.93) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## **“UNIFORM EXPUNGEMENT OF CRIMINAL RECORDS ACT”**

The General Assembly approved legislation enacting the “Uniform Expungement of Criminal Records Act.” This legislation provides a uniform procedure for how applications for expungement of all criminal records must be administered by the solicitor’s office in each circuit of the State. Only certain offenses are statutorily eligible to be expunged.

### **Expungement Process**

The clerk of court shall direct all inquiries concerning the expungement process to corresponding solicitor’s office to make application for expungement. A person applying to expunge a criminal record shall obtain the appropriate blank expungement form from the solicitor’s office in the judicial circuit where the charge originated. The use of this form is mandatory.

The applicant is responsible for payment to the solicitor’s office of a nonrefundable, administrative fee of \$250 per individual order. The solicitor’s office prosecuting the case in a court of General Sessions, at no cost to the accused person, shall cause an order for expungement to be issued for a person who is acquitted or who has his charges dismissed, discharged or nolle prossed unless the request was dismissed, discharged or nolle prossed as part of a plea arrangement under which the defendant pled guilty and was sentenced on other charges. The legislation includes similar provisions when criminal charges are brought in summary court and the accused is found not guilty or the charges are dismissed or nolle prossed.

The solicitor’s office shall implement policies and procedures to ensure that the expungement process is properly conducted. The legislation requires the solicitor or his designee to provide a copy of the completed expungement order to the applicant or his retained counsel.

As appropriate, the circuit pretrial intervention director, alcohol education program director, summary court judge, or State Law Enforcement Division (SLED) shall verify and document that the criminal charges in all cases are appropriate for expungement. SLED shall receive a \$25 fee for each verification request from the solicitor on behalf of the applicant. However, in the case of juvenile expungements, verification and



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documentation that the charge is statutorily appropriate for expungement must first be accomplished by the Department of Juvenile Justice and then SLED.

The applicant is also responsible to the clerk of court for the filing fee per individual order; however, if the charge is determined to be statutorily ineligible for expungement this prepaid clerk of court filing fee must be refunded to the applicant by the solicitor. Also, a filing fee may not be charged by the clerk's office to an applicant when the charge was discharged, dismissed, nolle prossed, or the applicant was acquitted. Each expungement order may contain only one charge sought to be expunged, except in those circumstances when expungement is sought for multiple charges occurring out of a single incident.

An applicant may seek relief in circuit court when a solicitor, in his discretion, does not consent to expungement. The solicitor may waive the fee when it is determined that a person has been falsely accused of a crime as a result of identity theft.

Each solicitor's office shall maintain a record of all fees collected related to expungement of criminal records which must be made available to the Chairmen of the House and Senate Judiciary Committees.

### **Booking Records, Files, Mug Shots, Fingerprints and Other Evidence**

Under this legislation, local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and where necessary, to defend such facilities during litigation proceedings except when an action, complaint or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to the charge discharged or dismissed is guilty of contempt of court.

### **South Carolina Court Administration Notice on All Bond Paperwork**

The legislation requires South Carolina Court Administration to include on all bond paperwork and courtesy summons the following notice: "If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged."

### **Youthful Offender Provisions**

This bill reduces the timeframe following a first offense conviction as a youthful offender the defendant may apply for an expungement order from fifteen years from the date of conviction to five years from the date of completion of the sentence, including probation and parole.

### **First Time Drug Offenses**

Relating to conditional discharge of certain first time drug offenses, this bill removes the current requirement that the person not be over twenty-five years of age at the time of the offense.

*STATUS: Having been approved by the General Assembly, **H.3022** (R.89) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

### **“VIOLENCE AGAINST WOMEN FEDERAL COMPLIANCE ACT”**

The General Assembly approved legislation enacting the "Violence Against Women Federal Compliance Act". This legislation's stated intent is to bring South Carolina into compliance with the federal Violence Against Women Act. With regards to certain offenders being ordered by the court to be tested for Hepatitis B and HIV at the request of the victim, this bill broadens the definition of "offender" to include both juveniles and adults. The bill further provides that the Department of Health and Environmental Control must advise the victim of available treatment options, and upon request of the victim, provide testing and post-testing counseling. The legislation allows law enforcement and prosecuting officers to request a victim of an alleged criminal sexual offense to submit to a polygraph examination or other truth telling device as part of the investigation, charging, or prosecution of the offense if the credibility of the victim is at issue; however, the officer or official must not require the victim to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation, charging, or prosecution of the offense. The legislation deletes the current provision requiring victims of criminal sexual conduct or child sex abuse to file incident reports for those victims to be able to receive a "medicolegal" examination without charge. At the time a person is convicted of violating certain criminal domestic violence offenses, this legislation requires the court to deliver to the person a written form that gives notice to the person that it is illegal under federal law for a person convicted of those offenses to ship, transport, possess or receive a firearm or ammunition.

*STATUS: Having been approved by the General Assembly, **H.3677** (R.111) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## **EDUCATION**

### **“FEDERAL EDUCATIONAL TAX-CREDIT BOND IMPLEMENTATION ACT”**

The General Assembly approved **H.3148**, the “Federal Educational Tax-Credit Bond Implementation Act”, to allow South Carolina’s school districts to take advantage of innovative financing programs for local governments that the United States Congress included among the many economic stimulus provisions of the American Recovery and

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Reinvestment Act of 2009 (ARRA). Traditionally, most financing undertaken by local governments is exempt from federal income tax. In order to stimulate local building activity and, further, to ameliorate the impact of a significant present weakness in the market for tax-exempt securities, ARRA, through a change in federal tax law, provides for the issuance by local school districts of a new type of obligation, the Qualified School Construction Bond (QSCB). It is the intent of Congress that QSCB obligations will be issued with an interest rate at or near to zero. In exchange for forgoing interest, the holder of a QSCB obligation will receive a credit against federal income tax intended to provide tax benefits equivalent to the forgone interest payments. The proceeds of QSCB obligations may only be used to defray the cost of the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which a facility is to be constructed. Of the billions of dollars in QSCB obligations that ARRA authorizes for issuance across the nation in 2009 and 2010, South Carolina has been allotted one hundred and thirty one million dollars under ARRA in 2009 plus special allocations for large districts that allow the school districts of Charleston County and Greenville County to receive direct allocations from the Secretary of the United States Department of Education.

The legislation establishes criteria for allocating South Carolina's QSCB issuance authority (not including the amount allocated to school districts of Greenville and Charleston Counties) which provide for the allocation of sixty percent to school districts having the lowest capital financing resources, measured in terms of assessed value per pupil, not to exceed a maximum of twenty million dollars per school district, and forty percent to school districts having an ability to expeditiously issue bonds demonstrated through a high credit rating and timely start and completion of a project, not to exceed ten million dollars per school district. Any remaining QSCB allocations shall be awarded on a pro rata basis to school districts that originally requested more than the maximum amount in a QSCB allocation.

*STATUS: Having passed the General Assembly, **H.3148** (R.96) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*

## **SCHOOL DISTRICT FUNDING FLEXIBILITY**

The General Assembly approved and the Governor signed into law **H.3352**, a joint resolution providing temporary funding flexibility provisions for school districts and special schools. For the 2008-2009 and 2009-2010 fiscal years, school districts and special schools of this State may transfer and expend funds among appropriated state general fund revenues, Education Improvement Act funds, Education Lottery Act funds, and funds received from the Children's Education Endowment Fund for school facilities and fixed equipment assistance, to ensure the delivery of academic and arts instruction to students. A school district may not, however, transfer funds required for debt service or bonded indebtedness. For the 2008-2009 and 2009-2010 fiscal years, school districts may: (1) suspend professional staffing ratios and expenditure regulations and guidelines at the sub-function and service area level, except for four-year-old programs; (2) delay from April fifteenth to May fifteenth the date that contracts are issued to teachers. A teacher who is reemployed by written notification shall notify the board of trustees of the district in writing of his acceptance of the contract within ten days of such notification or May twenty-fifth, whichever occurs later. Failure on the part of the teacher to notify the

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board of acceptance within the specified time limit is conclusive evidence of the teacher's rejection of the contract; (3) uniformly negotiate salaries below the school district salary schedule for the 2009-2010 school year for retired teachers who are not participants in the Teacher and Employee Retention Incentive Program; and (4 ) if not prohibited by an applicable employment contract, furlough teachers for up to five noninstructional days, provided that district administrators are furloughed for twice the number of days. To further ensure resources are maximized, school districts are encouraged to reduce expenditures by such means as: (1) limiting the number of low enrollment courses; (2) reducing travel for the staff and the school district's board; (3) reducing and limiting activities requiring dues and memberships; (4) reducing transportation costs for extracurricular and academic competitions; and (5) expanding virtual instruction. Education related entities that require dues from school districts are encouraged to consider cost-saving measures for school districts including, but not limited to, coordination and reductions in dues, workshops, and professional training initiatives. Prior to implementing these flexibility provisions, school districts must provide to public charter schools the per pupil allocation due to the charter schools for each categorical program. The legislation requires written certification reports from school districts implementing these funding flexibility measures. For the 2008-2009 and 2009-2010 fiscal years, implementation of formative assessments for grades one, two, and nine, the foreign language program assessment and the physical education assessment, must be suspended. New textbook adoptions may be suspended. School districts and the State Department of Education must be granted permission to purchase the most economical type of bus fuel. In order for a school district to take advantage of the flexibility provisions provided in this joint resolution and for the 2009-2010 fiscal year only, at least sixty-five percent of the school district's per pupil expenditures must be utilized within the categories of instruction, instructional support, and noninstruction pupil services of the "In\$ite" financial analysis model for education programs utilized by the State Department of Education. No portion of the sixty-five percent may be used for business services, debt service, capital outlay, program management, and leadership services, as defined by In\$ite. By August 1, 2010, the school district shall report to the State Department of Education the actual percentage of its per pupil expenditures used for classroom instruction, instructional support, and noninstruction pupil services for the school year ending June 30, 2010. For the 2009-2010 fiscal year, school districts must maintain a transaction register that includes a complete record of all funds expended over one hundred dollars, from whatever source for whatever purpose. The register must be prominently posted on the district's Internet website and made available for public viewing and downloading. For Fiscal Years 2008-2009 and 2009-2010, the joint resolution suspends the statutory provision establishing the level of financial effort per pupil required of each school district.

*STATUS: Having passed the General Assembly, **H.3352** (R.14) was ratified on April 2, 2009, and was signed into law by the Governor on April 7.*

## **ENERGY/CONSERVATION**

### **RECYCLING SPECIAL LICENSE PLATES**

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The General Assembly approved legislation allowing the Department of Motor Vehicles to issue special motor vehicle license plates to owners of private passenger carrying motor vehicles or motorcycles registered in their names which shall have imprinted on the plate 'Reduce, Reuse, Recycle' and the recycling logo. The Carolina Recycling Association shall submit to the department for its approval a design it desires to be used for this special license plate. The Carolina Recycling Association may request a change in the design not more than once every five years. The fee for this special license plate is thirty dollars every two years in addition to the regular motor vehicle registration fee. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued. The fees collected pursuant to this section above the cost of the regular motor vehicle registration fee must be distributed to the Carolina Recycling Association to promote the growth of the South Carolina recycling industry. The legislation includes production guidelines for the plates.

*STATUS: Having been approved by the General Assembly, **H.3762** (R.115) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## **RENEWABLE ENERGY RESOURCES/ENERGY GOALS FOR STATE AGENCIES**

The General Assembly approved legislation that defines "renewable energy resources" as energy conservation and efficiency, solar photovoltaic energy, solar thermal energy, wind power, hydroelectric power, geothermal energy, tidal energy, wave energy, recycling, hydrogen fuel derived from renewable resources, biomass energy, energy derived from municipal and other solid waste, energy derived from waste oil, energy derived from waste tires, and landfill gas. The legislation also establishes provisions for energy efficiency and renewable energy goals for state government requiring each agency to consider reductions of its energy, water, and wastewater use, and must implement recommended conservation measures to the degree the agency determines that the measures are cost effective. The legislation requires the State Energy Office to submit to the General Assembly, on an annual basis, a review of the state energy action plan. An audit must be performed by internal or external auditors, or by an energy services company. The audit results and recommendations must be included in the annual review. All agencies must comply by July 1, 2011.

*STATUS: Having passed the General Assembly, **S.232** (R.45) was signed by the Governor on May 19, 2009 (Act No. 19).*

## **FAMILY/HEALTH**

### **ALZHEIMER'S DISEASE REGISTRY**

The General Assembly passed **S.463**, legislation expanding the types of data to be collected for the Alzheimer's Disease Registry. The registry is authorized to conduct follow-back studies, prospective studies of the progression and treatment of Alzheimer's

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disease and related disorders, and research on caregiving for individuals with Alzheimer's disease or a related disorder, on services used by individuals with Alzheimer's disease or a related disorder, and on causes of Alzheimer's disease and related disorders that examines risks associated with area of residence. Caregivers must provide informed consent to participate in research.

*STATUS: Having been approved by the General Assembly, **S.463** (R.71) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## **‘BORN-ALIVE’ LEGISLATION**

The House of Representatives approved legislation which provides that, in determining the meaning of any act or joint resolution of the General Assembly or in a regulation promulgated pursuant to Article 1, Chapter 23, Title 1, the words 'person', 'human being', 'child', and 'individual', must include every infant member of the species homo sapiens who is born alive at any stage of development. The term 'born alive', with respect to a member of the species homo sapiens, means the complete expulsion or extraction from the mother of that member, at any stage of development, who after the expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion. Nothing in this legislation may be construed to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point before being 'born alive' as defined in this legislation.

*As passed by the Senate, the legislation includes two additional provisions: “Nothing in this subsection shall be construed to affect existing federal or state law regarding abortion.” “Nothing in this subsection shall be construed to alter generally accepted medical standards.”*

*STATUS: Having passed the House of Representative and Senate in different versions, a conference committee has been appointed for the bodies to work out their differences with regards to **H.3342**.*

## **“MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2009”**

The General Assembly approved **S.390**, the “Mental Health Parity and Addiction Equity Act of 2009”. The legislation revises state statutory requirements for issuers of group health insurance under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), by including the treatment of substance use disorders within mental health parity provisions which require insurance plan

benefits and treatment limitations to be no more restrictive for the treatment of mental health conditions than for the treatment of physical conditions.

*STATUS: Having passed the General Assembly, **S.390** (R.69) was ratified on May 27, 2009, and became law without the Governor's signature on June 3.*

## **RESPONSIBLE FATHER REGISTRY WITHIN THE DEPARTMENT OF SOCIAL SERVICES**

### **Responsible Father Registry**

In order to expedite the placement of adoptive children in stable and permanent homes, the General Assembly approved legislation establishing the Responsible Father Registry within the Department of Social Services. The purpose of this registry is to provide notice of adoption or petition for termination of parental rights proceedings to unmarried biological fathers who affirmatively assume responsibility for children they may have fathered by registering. No unmarried biological father who fails to file a claim of paternity with the registry is entitled to notification of any adoption proceeding or any termination of parental rights proceeding concerning the unmarried biological father's child. The registry is not available for public inspection and is not subject to disclosure under the Freedom of Information Act; however, under certain circumstances outlined in the legislation the information may be disclosed. Any unauthorized use, or attempted unauthorized use, of the registry is expressly prohibited, and any person or organization seeking, receiving, using, or publishing, or attempting to do so, of any information contained in the registry in violation of these provisions is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 or imprisoned for not more than 30 days, or both. A person who knowingly, maliciously, or in bad faith files a false claim of paternity with the registry is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 or imprisoned for not more than 30 days, or both.

### **Petitions for Termination of Parental Rights**

Relating to persons or entities entitled to be served with a petition for termination of parental rights, this legislation further specifies the age as fourteen for serving a child and provides for service on the guardian ad litem of a child under fourteen years of age. The legislation also specifies the notice provisions applicable to an unmarried biological father of a child whose parental rights are being terminated.

The legislation requires the hearing on the petition to terminate parental rights to be held within 120 days of the date the termination of parental rights petition is filed. A party may request a continuance that would result in the hearing be held more

than 120 days after the petition was filed, and the court may grant a continuance in its discretion. If a continuance is granted, the court must issue a written order scheduling the case for trial on a date and time certain.

*STATUS: Having been approved by the General Assembly, **H.3311** (R.99) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## STROKE SYSTEMS OF CARE STUDY COMMITTEE

The legislation establishes a study committee within the Department of Health and Environmental Control to develop recommendations for a regionally organized and statewide comprehensive plan for stroke systems of care. The South Carolina Board of Health and Environmental Control shall appoint the members and the chairperson of this committee. The study committee shall be composed of one physician actively involved in stroke care from the field of neurology, neuroradiology, neurosurgery, pediatrics, emergency medicine, rehabilitation medicine, internal medicine, cardiology and one emergency medical services provider. In addition the committee will also include one registered nurse, a licensed physical therapist, a physician or representative of an organization actively involved in addressing minority health issues, a representative of the South Carolina Hospital Association and American Stroke Association, an administrator of an acute stroke rehabilitation facility, the Deputy Commissioner of the South Carolina Department of Health and Environmental Control, Health Services Division, and the director of the South Carolina Department of Health and Environmental Control, Emergency Medical Services. The committee members shall serve without mileage, per diem and subsistence. The study committee shall submit its report electronically to the General Assembly and the Governor no later than December 1, 2010, at which point it will dissolve.

*STATUS: Having passed the General Assembly, **S.26** (R.22) became law without the Governor's signature on May 7, 2009.*

## GOVERNMENT

### CHRISTMAS EVE DESIGNATED A STATE HOLIDAY

The General Assembly approved and the Governor signed into law **S.668** which establishes December 24, Christmas Eve, as an official state holiday.

*STATUS: Having passed the General Assembly, **S.668** (R.76) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

### LOCAL GOVERNMENT SEX OFFENDERS RESIDENCE RESTRICTIONS

The General Assembly approved legislation prohibiting a local government from enacting an ordinance that expands or contracts the boundaries of the areas in which a sex offender may or may not reside that are contained in State law.

*STATUS: Having been approved by the General Assembly, **H.3087** (R.91) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*



## RESIDENT VENDOR PREFERENCES IN STATE PROCUREMENT

The General Assembly approved **S.116**, a bill that enhances resident vendor preferences in state government contracting for goods and services. The legislation revises provisions of the Consolidated Procurement Code relating to vendor preferences, so as to provide for new preferences for end products from South Carolina and from the United States and for contractors and subcontractors who employ South Carolina residents. A new vendor preference is established for bidders that maintain offices in South Carolina. The legislation establishes eligibility requirements for the preferences and provides penalties for fraudulently claimed preferences.

*STATUS: Having passed the General Assembly, **S.116** (R.55) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## SOUTH CAROLINA GUARDIAN AD LITEM PROGRAM

The General Assembly approved legislation allowing the South Carolina Guardian ad Litem Program, or a county guardian ad litem program, whichever is appropriate, to intervene in an abuse or neglect proceeding in order to petition the court to relieve the volunteer, lay guardian ad litem from appointment for the following reasons: (a) incapacity; (b) conflict of interest; (c) misconduct; (d) persistent neglect of duties; (e) incompetence; or (f) a knowing and wilful violation of program policies and procedures that affect the health, safety, and welfare of the child. The court shall determine what is in the best interest of the child when ruling on the petition. This bill also provides that reports and information maintained by a guardian ad litem are confidential.

*STATUS: Having been approved by the General Assembly, **H.3118** (R.92) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

## STATE AGENCY FURLOUGH PROGRAMS

The General Assembly approved and the Governor signed into law H.3378 which establishes new terms and conditions for mandatory state agency furlough programs during budget shortfalls. The legislation provides that, in a fiscal year in which the general funds appropriated for a state agency are less than what was appropriated in the prior fiscal year, or in a fiscal year in which an agency that is funded by other funds projects other funds collections to be less than in the prior fiscal year, or whenever the General Assembly or the State Budget and Control Board implements a midyear across-the-board budget reduction, agency heads may institute employee furlough programs of not more than ten working days in the fiscal year in which the deficit is projected to occur. The furlough must be inclusive of all employees in an agency or within a designated department or program, regardless of source of funds or place of work, and must include all classified and unclassified employees in the designated area. However, a furlough program may also be implemented based upon pay band for classified employees and based upon pay rate for unclassified employees within the agency or designated department. Employees who provide direct patient or client care and front-line employees who deliver direct customer services may be exempted from a mandatory furlough. If the state agency will incur costs for overtime under the federal Fair Labor Standards Act, law enforcement employees and correctional employees may be exempted from a mandatory furlough. A mandatory furlough must include the agency head. Constitutional officers are exempt from mandatory furlough. Scheduling of furlough days, or portions of days, shall be at the discretion of the agency head, but under no circumstances should the agency close completely. During a furlough, affected employees shall be entitled to participate in the same state benefits as otherwise available to them except for receiving their salaries. The implementation of a furlough program shall be on an agency-by-agency basis. Agencies may allocate the employee's reduction in pay over the balance of the fiscal year for payroll purposes regardless of the pay period within which the furlough occurs. The State Budget and Control Board shall promulgate guidelines and policies, as necessary, to implement these provisions of this section. State agencies shall report information regarding furloughs to the Office of Human Resources of the State Budget and Control Board.

*STATUS: Having passed the General Assembly, H.3378 (R.33) was ratified on April 30, 2009, and signed into law by the Governor on May 6 (Act No. 8).*

## **STATE PORTS AUTHORITY**

The General Assembly approved legislation revising the governance and operation of the South Carolina State Ports Authority.

### **Board of Directors Qualifications, Appointment, Terms and Officers**

Under the legislation, the governing authority is a board of directors consisting of eleven members, nine voting members appointed by the Governor, the Secretary of Transportation or his designee, and the Secretary of Commerce or his designee. The voting members shall be responsible for setting policies and direction of the authority so that the authority may achieve its mission. The powers and duties shall be exercised by the board. The board may delegate to one or more officers, agents, or employees such powers and duties as it determines are necessary and proper for the effective, efficient operation of the port. The Secretary of Transportation and the Secretary of Commerce serve on the board as ex officio, nonvoting members. They are ineligible to serve as officers and may only attend meetings or portions of meetings open to the public.

The members of the board, except for the Secretary of Transportation and the Secretary of Commerce, serve for terms of five years each and until their successors have been appointed, screened, and have qualified.

The board shall elect one of its members to serve as chairman who shall serve for a term of two years in this capacity and may not serve more than three consecutive full two-year terms as chairman. The board shall also elect a vice chairman, secretary and treasurer.

Members of the board of directors may be removed by the Governor for misconduct, breach of duty, or for entering into a conflict of interest transaction.

The legislation establishes new qualifications for board members, except for the ex officio Secretary of Transportation and Secretary of Commerce or their designees, requiring board members to possess a four-year baccalaureate or more advanced degree from a qualifying institution of higher learning. In addition, each board member must possess a background of at least five years in any one or any combination of the following fields of expertise: (a) maritime shipping; (b) labor related to maritime shipping; (c) overland shipping by truck or rail, or both; (d) international commerce; (e) finance, economics, or statistics; (f) accounting; (g) engineering; (h) law; or (i) business management gained from serving as a chief executive officer, president, or managing director of a business or any upper level management position with a business that is equivalent in duties and responsibilities to the positions listed.

When making appointments to the board, the Governor shall ensure that the diverse interests represented by the port are represented. To the greatest extent possible, the Governor shall ensure that the membership of the board includes a certified public accountant, a member representing port users such as manufacturers, shippers, and importers, a member representing the state's economic development interests, and a member who has served as a corporate chief executive officer. Consideration of these factors in no way creates a cause of action or basis of an employee grievance for a person appointed or for a person who fails to be appointed.

### **Duties of the Board of Directors**

The board shall conduct an annual performance review of the executive director and submit a written report of its findings to the Governor and the General Assembly. A draft of the performance review must be submitted to the executive director, and the executive director must be given an opportunity to be heard by the board of directors before the board submits its final draft to the Governor and the General Assembly.

A member of the board of directors shall discharge his duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner he reasonably believes to be in the best interests of the authority. The legislation provides a definition for the term "best interests." The legislation outlines what type of information a director is entitled to rely upon in discharging his duties as a director. The legislation defines a conflict of interest transaction and outlines under what circumstances such a transaction is not voidable by the authority.

### **Executive Director of Port Operations**

The board of directors shall employ an Executive Director of Port Operations who shall serve at the pleasure of the board. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations. The executive director is charged with the affirmative duty to carry out the mission, policies, and direction of the authority as established by the board of directors. The executive director shall appoint a director for each division contained in the organizational structure established by the board of directors; division directors serve at the pleasure of the executive director. Compensation for the executive director and division directors shall be approved by the board of directors in a public vote. The legislation requires the executive director to employ a director of port operations for the port of Georgetown.

### **Powers and Duties of the Authority**

Among other things, the legislation requires the authority to develop a long-range port development and capital financing plan. It has a duty to review port operation and proposals for future operations and constructions to determine whether utilizing a public-private partnership is advantageous. It shall take all necessary steps it finds reasonable to establish rail access to port facilities in Charleston County by any Class I railway operating in Charleston County. The authority shall take all action necessary to complete construction of a container terminal in North Charleston. Without prior approval from the State Budget and Control Board, the authority may not sell may not sell any real property or any buildings, terminals, or other permanent structures, excluding equipment, appurtenant to real property that are or may be used to carry out the purposes of the authority. At least once each year the authority shall furnish the Governor, the Chairmen of the Senate Transportation Committee and the House of Representatives Ways and Means Committee and post on its website a complete detailed statement of all monies received and disbursed during the previous year. The authority shall maintain a transaction register that includes a complete record of all appropriated funds expended over \$100, from whatever source for whatever purpose. The register must be prominently posted on the authority's website and made available

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for public viewing and downloading. The register must be searchable and updated at least once a month. Each monthly register must be maintained on the website for at least five years.

**The Review and Oversight Commission of the South Carolina State Ports Authority**

This commission is composed of ten legislative members, five from the Senate and five from the House of Representatives. In making appointments to the commission, race, gender, and other demographic factors such as residence in rural or urban areas, must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State.

Among other things, the commission has the duty to screen each person appointed to serve on the board; to determine if each candidate is qualified and meets the requirements provided by law to serve as a member of the board of directors; and to conduct an oversight review of the authority and its operations at least once every two years. A written report of the findings from each oversight review must be published in the journals of both houses and made available on the General Assembly's website and transmitted to the Governor and board. The commission also has a duty to review and evaluate the complete list of the properties on Daniel and Thomas Islands transmitted to the commission. The commission must recommend to the Budget and Control Board whether to approve the sale or sell, as appropriate, any or all of the all real property the authority owns on these islands.

An oversight review report must at least contain: (1) a performance review of each member of the board during the previous two years; (2) a performance review of the executive director; and (3) and evaluation of the actions of the board, sufficient to allow the member of the General Assembly to better judge whether these actions serve the best interest of the citizens of South Carolina.

To assist the commission in performing the performance reviews and evaluations, the commission may develop and distribute, as appropriate, an anonymous and confidential survey evaluating the board members and executive director. Also, the commission may request and shall be provided within fifteen days after the request with any documents related to the sale or disposition or contemplated sale or disposition of any real property owned by the authority.

**Jasper Port**

The legislation adds Jasper to list of ports for which the authority has responsibility, and it directs the authority to take necessary action to establish a port at Jasper in accordance with the compact between South Carolina and Georgia.

**Port Royal, Daniel Island and Thomas (St. Thomas) Island**

Upon the effective date of this legislation, the State Ports Authority has no statutory obligation to operate a marine terminal at Port Royal, and marine operations at Port Royal shall cease as soon as practicable. The State Ports Authority is directed to sell all of its real and personal property at Port Royal. The property must be transferred to the

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Budget and Control Board for sale if the authority is unable to complete the sale by December 31, 2009.

The State Ports Authority is also directed to sell all real property it owns on Daniel Island and Thomas Island with certain exceptions. The property must be transferred to the Budget and Control Board for sale if the authority is unable to complete the sale by December 31, 2013. The legislation gives the right of first refusal to those former landowners on Thomas Island who sold their land located within the transportation corridor to the authority in anticipation of the authority's exercise of eminent domain. The right of first refusal must provide that the landowner may repurchase his land at the same price for which the authority purchased it from him.

*STATUS: Having been approved by the General Assembly, **S.351** (R.64) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## **VOLUNTEER STRATEGIC ASSISTANCE AND FIRE EQUIPMENT (V-SAFE) PROGRAM**

The General Assembly approved **S.364** which establishes the volunteer strategic assistance and fire equipment (V-SAFE) program to offer grants to eligible volunteer and combination fire departments to pay for training and purchase protective gear, fire suppression equipment, vehicles, and other materials needed for the purpose of protecting local communities from incidents of fire, hazardous materials, and terrorism and to provide for the safety of volunteer firefighters. Grants awarded shall not exceed thirty thousand dollars per year for each eligible chartered fire department, with no matching or in-kind money required. A chartered fire department may be awarded only one grant in a three-year period. The grant program is contingent upon the General Assembly appropriating sufficient funds.

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The grants are to be administered by the State Fire Marshal in conjunction with a peer review panel that is established under the legislation.

*STATUS: Having passed the General Assembly, **S.364** (R.67) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## **MILITARY**

### **ASSISTANT ADJUTANT GENERAL**

The General Assembly approved legislation to provide that, when authorized by the National Guard Bureau, there may be an additional Assistant Adjutant General for the South Carolina Army National Guard who may hold the rank of major general.

*STATUS: Having been approved by the General Assembly, **H.3749** (R.113) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

### **GOLD STAR FAMILY SPECIAL LICENSE PLATES**

The General Assembly approved legislation relating to Gold Star Family special license plates. Current law does not define who is eligible for this special license plate. This legislation allows the Department of Motor Vehicles to issue these special license plates to members of the immediate family of United States armed forces members killed in action. An immediate family member is defined as a parent, spouse, sibling, or child of an armed forces member killed in action. Each qualifying person is entitled to a limit of two 'Gold Star Family' special license plates. This legislation exempts these plates from certain production and distribution requirements, and it waives certain fees for these special license plates.

*STATUS: Having been approved by the General Assembly, **H.3134** (R.95) was ratified on May 27, 2009, and was signed into law by the Governor on June 2.*

### **“MILITARY PARENT EQUAL PROTECTION ACT”**

The General Assembly approved legislation enacting the “Military Parent Equal Protection Act.”

#### **Child Custody, Visitation and Support Orders**

This legislation outlines provisions for the modification of a custody or visitation order if one of the parents is in the military service. The term military service is defined in the legislation. Among other things, the legislation provides if a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms establishing custody or visitation contained in an existing order until

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90 days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of the custody or visitation terms established in an existing order. If there is no existing order establishing the terms of custody or visitation and it appears that military service is imminent, this legislation allows either parent to petition the court to petition the court for a temporary hearing to establish temporary custody or visitation to ensure the military parent has access to the child, to establish support, and to provide other appropriate relief.

If a military parent is called to military service, either parent may file a notice of activation of military service and petition to modify a support order. The legislation also includes provisions for the temporary modification of support order. Except for modifying a child support obligation during military service pursuant to these provisions, a military parent's income during military service must not be used to determine the military parent's income or earning capacity. As military necessity may preclude court adjudication before mobilization, the legislation encourages the parties to negotiate mutually agreeable arrangements prior to mobilization. The legislation includes provisions for the award of attorney's fees.

**Civil Proceedings Where a Service Member is Entitled to a Stay Pursuant to the Federal Service Members Civil Relief Act**

The legislation further provides that a service member who is entitled to a stay in civil proceedings pursuant to the federal Service Members Civil Relief Act may elect to proceed while the service member is reasonably unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video-conferencing, internet camera, email, or another reasonable electronic means. Testimony presented must be made under oath, in a manner viewable by all parties, and in the presence of a court reporter. In matters when a party who is physically present in the State is permitted to use affidavits or seek temporary relief, the service member may submit testimony by affidavit. The court must allow a party to proceed unless an opposing party establishes a compelling reason not to proceed by clear and convincing evidence. The court must allow a party to present evidence pursuant to a method provided by this section unless an opposing party established that the method will cause a substantial injustice, deny effective cross examination, deny the right to confront the witness, or abridge another constitutional right.

*STATUS: Having been approved by the General Assembly, **S.155** (R.57) was ratified on May 27, 2009, and was signed by the Governor on June 2.*

## **TAXATION**

**“LOCAL OPTION TOURISM DEVELOPMENT FEE ACT”**



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The General Assembly approved **S.483**, the “Local Option Tourism Development Fee Act” to provide a means of enhancing the state’s tourism industry during the present economic downturn. The legislation provides a way for a municipality that is located in a county in which at least fourteen million dollars in state accommodations tax revenue has been collected during a fiscal year to impose a fee not to exceed one percent of amounts subject to the state’s sales and use tax, for a period of up to ten years. The fee may be imposed by: (1) an ordinance adopted by a supermajority of the municipal council which must be at least two-thirds of the members of a municipal council; or (2) the approval of a majority of qualified electors voting in a referendum called by a majority of the members of the municipal council. Revenue collected from this local option fee must initially be used exclusively for tourism advertisement and promotion directed at non-South Carolina residents. Beginning in the third year of imposition, the legislation allows a portion of the revenues to be used for property tax rollbacks on owner-occupied real property and tourism-related capital projects.

*STATUS: Having passed the General Assembly, **S.483** (R.11) was ratified on April 2, 2009, and became law without the Governor’s signature on April 9 (Act No. 3).*

## **REAL PROPERTY TAX ON NEWLY-CONSTRUCTED HOMES**

The General Assembly approved **H.3018**, a bill revising real property tax provisions for newly-constructed homes. Currently, once a certificate of occupation is issued for a newly-constructed home, it becomes subject to a higher tax rate applicable to residential property even if that home sits empty and unsold for months or years. Under the legislation, a newly-constructed detached single family home remains eligible for the lower tax rate allowed for unimproved property until it is occupied by being sold or rented, or for up to six years, whichever comes first.

*STATUS: Having passed the General Assembly, **H.3018** (R.88) was ratified on May 27, 2009. The Governor vetoed the legislation on June 2.*

## **TAXATION REALIGNMENT COMMISSION**

A conference committee has been appointed to address the differences of the Senate and House of Representatives on **S.12**. This bill establishes the South Carolina Taxation Realignment Commission to conduct a comprehensive study of the state’s tax system. The legislation approved by the House establishes a seventeen-member commission composed of: (1) two members appointed by the Governor; (2) two members appointed by the President Pro Tempore of the Senate; (3) two members appointed by the Speaker of the House of Representatives; (4) two members appointed by the Chairman of the Senate Finance Committee; (5) two members appointed by the Chairman of the House Ways and Means Committee; (6) three members of the Senate to serve ex officio, to be appointed by the President Pro Tempore of the Senate; (7) three members of the House to serve ex officio, to be appointed by the Speaker of the House of Representatives; and (8) the Director of the Department of Revenue to serve ex officio. The members appointed according to items (1) through (5) may not be

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members of the General Assembly and must have substantial academic or professional experience or specialization in one or more areas of public finance, government budgeting and administration, tax administration, economics, accounting, or tax law. Commission members shall serve without compensation and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of boards, committees, and commissions. Staffs of the Senate Finance Committee and the House Ways and Means Committee shall be available to assist the commission in its work. Any commission expenses are to be paid equally by the Senate and the House of Representatives. Commission members shall not receive information regarding the business of the commission from a lobbyist except through formal presentation to the commission at a meeting called in compliance with the Freedom of Information Act. A lobbyist is subject to a misdemeanor offense and penalties for a violation. The Taxation Realignment Commission is charged with developing criteria for assessing the effectiveness of the current tax system structure, as well as the likely systemic impact of any proposed changes affecting tax revenues, and reporting this criteria to the General Assembly within three months of the effective date of this legislation. All such criteria must be designed with an emphasis on the systemic balance of the state's revenue structure from the standpoint of adequacy, equity, and efficiency and with the goal of maintaining and enhancing the State as an optimum competitor in efforts to attract businesses and individuals to locate, live, work, and invest in the state. The commission must, no later than March 15, 2010, prepare and deliver a report and recommendation to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee, including the text of an amendment that effectuates the recommendations. The commission's report must be a detailed, comprehensive, and careful evaluation of the state's tax system structure. The commission's report shall consider: (a) sales and use tax exemptions or limitations to be retained, modified, or repealed; (b) the assessment of state and local taxes levied and other provisions affecting state and local revenue to fund the operation and responsibilities of state and local government, respectively; and (c) any fee, fine, license, forfeiture, or Other Funds. Additionally, the commission shall study and make recommendations to the General Assembly of the advantages and drawbacks of a revenue neutral replacement of the state individual and corporate income tax, state imposed sales and use tax, estate tax, bank tax, savings and loan association tax, and taxes on beer, wine, and alcoholic beverages with a broadly based consumption tax modeled on the proposed federal Fair Tax as that form of tax would have to be adapted to apply on the state level. In its study, the commission shall specifically consider how such a tax swap would affect jobs creation, savings and investment, and tax compliance costs for South Carolina taxpayers. The commission may continue to study identified subjects and make further legislative recommendations until January 1, 2011, at which time it shall be dissolved.

*The Senate-approved version of **S.12** features several substantial differences. Notably, the Senate version establishes an eleven-member commission composed of: (1) one member each appointed by the President Pro Tempore of the Senate, the Senate Finance Committee Chairman, the Senate Majority Leader, and the Senate Minority Leader; (2) one member each appointed by the Speaker of the House, the House Ways and Means Committee Chairman, the House Majority Leader, and the House Minority Leader; (3) two members appointed by the Governor; and (4) the Director of the Department of Revenue, to serve ex officio. Members of the General Assembly may not be appointed to the commission. The Senate version also authorizes the commission to hire a director.*

*STATUS: **S.12** passed the Senate and the House of Representatives in different versions. A conference committee was appointed on May 14, 2009, to address the bodies' differences on the legislation.*

## TRANSPORTATION

### HANDICAPPED PARKING

The General Assembly approved legislation revising handicapped parking provisions. The legislation includes new requirements, such as: heightening the criteria doctors must find before qualifying a person as handicapped; increasing the fines and penalties for those caught abusing the handicapped parking laws; defining the marked access aisle adjacent to the handicapped parking place to clarify that non-handicapped people may not block this space; and requiring the photograph of the handicapped person to be on the placard. In conjunction with the issuance of a handicapped plate or placard and renewals, a person will be issued a registration certificate that must be carried at all times in the vehicle driven by or transporting the handicapped individual. The certificate will display the name of the individual or organization to which the placard or plate was issued. When parked in designated spaces, the driver of the vehicle must present the registration certificate when requested by law enforcement entities or their duly authorized agents. The legislation provides for the processing of all handicapped placards through a central office and for issuing only one placard per person. The bill's effective date is delayed for six months, and it requires a renewal of all placards by January 1, 2013.

*STATUS: Having been approved by the General Assembly, **S.126** (R.56) was ratified on May 27, 2009, and signed by the Governor on June 2.*

### HIGHWAY BEAUTIFICATION PILOT PROJECT TO REDUCE THE NUMBER OF NONCONFORMING BILLBOARDS

The General Assembly approved legislation authorizing the Department of Transportation (DOT) to develop and submit to the Federal Highway Administration an outdoor advertising control pilot project that permits qualified applicants to upgrade one nonconforming wooden or I-beam sign adjacent to Interstate 26 or Interstate 95 in exchange for the applicant's removal of at least two of his other nonconforming signs of similar or larger size on routes regulated by the Highway Control Act. DOT may charge application, annual, or other reasonable fees necessary to defray the administrative costs of implementing and maintaining the outdoor advertising program. DOT may implement the pilot program at any time at the discretion of the Secretary of Transportation upon approval by the Federal Highway Administration.

*STATUS: Having been approved by the General Assembly, **S.166** (R.58) was ratified on May 27, 2009, and was signed by the Governor on June 2.*

## UNLAWFUL OPERATION OF AN AMBULANCE

The General Assembly approved legislation placing restrictions on the operation of decommissioned ambulances or vehicles upfitted as ambulances. This bill provides that it is unlawful for a person to operate a vehicle that is upfitted as an ambulance or no longer permitted and licensed as an ambulance unless the vehicle's exterior equipment and markings that distinguish it as an ambulance are removed. The bill establishes both misdemeanor and felony offenses for violations. Exceptions are provided for: (1) eleemosynary or not-for-profit organizations that operate an ambulance that is no longer permitted and licensed and whose exterior markings have been removed for use in parades, fundraising activities, and other official functions; (2) a person operating a vehicle that is going from the place of purchase to his home or his fixed place of business; (3) a person operating a vehicle going to a location for the purpose of removing the vehicle's exterior equipment or markings, or (4) a person operating an antique vehicle.

*STATUS: Having been approved by the General Assembly, **S.420** (R.25) was signed into law by the Governor on May 6, 2009 (Act No. 5).*

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